

DEPARTMENT OF INDUSTRIAL RELATIONS

INDUSTRIAL MEDICAL COUNCIL

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**Title 8. Industrial Medical Council****Initial Statement of Reasons**

Labor Code section 139.2 (j)(2) requires the Industrial Medical Council (IMC) to promulgate rules and regulations concerning "procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury." The IMC has previously adopted evaluation protocols concerning various injuries to other parts of the body. 8 Cal. Code of Regs. §§ 40-47. The IMC seeks to modify its current methodology of evaluating injuries to the neuromusculoskeletal system.

The purpose of these regulations is to ensure that all physicians who perform medical evaluations produce complete accurate, uniform and replicable evaluations.

Statement of Necessity

The IMC has determined that the proposed regulations are necessary to the effectiveness of the operation of the workers' compensation medical evaluation process. The IMC is required promulgate this evaluation protocol to fulfil its mandate set forth in Labor Code section 139.2 (j)(1). All physicians in the evaluating the existence and extent of permanent impairments and limitations resulting from a neuromusculoskeletal injury must use this protocol. Labor Code § 139.2 (j)(2). On October 20, 1994, the IMC promulgated it initial evaluation protocol. After reviewing the current guideline, in 2000, the IMC proposed an additional section that outlined the evaluation criteria for evaluating injuries to the cervical spine. During the course of that rulemaking, the comments received by the IMC from the public made it apparent that the existing rules for evaluation of neuromusculoskeletal disabilities needed modification to clarify ambiguities among other things.

Reliance on Data

The IMC has not relied on any special data in promulgating these regulations.

Materials relied upon in this Rulemaking

The Council consulted 8 C.C.R. section 9725, that specifies use of "Evaluation of Industrial Disability" edited by Packard Thurber, Second Edition, Oxford University Press, New York, 1960 (Packard Thurber), as the method for measuring the physical elements of a disability. The

Council has consulted and relied upon the provision of 8 C.C.R. § 9727 for describing subjective disability. The IMC also consulted the provisions of the Schedule for Rating Permanent Disabilities (the Rating Schedule), promulgated by the Administrative Director of the Division of Workers' Compensation. Labor Code section 4660 authorizes the Administrative Director to promulgate the Rating Schedule. The Council consulted the Rating Schedule to determine if the specific actions or procedures described in these regulations were consistent with procedures for rating disabilities of the cervical spine utilized in the workers' compensation system.

Copies of this material are contained in the rulemaking file maintained by the IMC.

Consideration of Alternatives

The IMC needs to determine that there are no alternatives to the proposed regulation that would be more effective in carrying out the purpose of Labor Code section 139 (j) or would be less burdensome than the proposed regulations. These regulations prescribe specific actions or procedures to determine the nature and extent of neuromusculoskeletal impairment. The IMC shall consider the use of performance standards as an alternative to these regulations that also meet the needs of the workers' compensation community.

Informative Digest

Section Amended: 46 -Introduction

8 C.C.R. 46-Introduction-A Basic purpose of Guideline

8 C.C.R. 46-Introduction-B General Approach

Specific Purpose of the section

These introductory sections give the examining physician a general approach to the conduct of a comprehensive medical examination.

Factual basis that the Amendment is necessary

Some medical evaluators who are treating physicians have little contact with the workers compensation system. This section clarifies who can take the history from the patient and excerpt the injured worker's medical history from the medical records provided. Some physicians do not identify or highlight discrepancies in the medical records. This section instructs the physician to identify and clarify any discrepancies revealed in the oral medical history given by the injured worker or contained in the medical records reviewed by the examining physician. The changes made to the introductory section "A" clarify that the section applies to all comprehensive medical-legal evaluations as defined in section 9793(c) of title 8 of the California Code of Regulations. The changes made to the introductory section "B" are grammatical changes.

Section amended: section 46, Section I

Section I, the Component Parts of the Report section, set forth the issues physicians must address in a comprehensive medical legal report. The IMC patterned this part of the

guideline on section 10606 of title 8 of the California Code of Regulation. This section an explanation of the requirements of the different elements of a comprehensive medical examination and a comprehensive medical report to the medical examiner.

8 C.C.R. 46-Section I-Components of the Report-A Initial Page

Specific Purpose of the section

This section of the guideline informs the physician what is required in the first page of every comprehensive medical report.

Factual basis that the section is necessary

In the case of medical reports performed by Qualified Medical Examiners and Agreed Medical Examiners, the physician must identify who engaged the physician's services. The judges of the Workers' Compensation Appeals Board (WCAB) have indicated that they receive reports, which they cannot attribute to any party. The time a physician spends with the injured worker, known, as "face to face" time must be recorded in every medical report. The current version of the guideline does not explicitly address the issue of the amount of face to face time a physician is required to spend with the person who is the subject of the examination.

8 C.C.R. 46-Section I-Components of the Report-B History

Specific Purpose of the section

This section requires the physician to take a complete medical and occupational history from the injured worker, noting any discrepancies between, and among the various sources of the history.

Factual basis that the Section is necessary

Section 10606 (b) and (e), respectively, requires a physician to take a history of the current injury and a general medical history, including past injuries, conditions and any residuals. This section makes specific the extent of the history taken from the injured worker by the examining physician. The medical history is important because permanent disability is frequently determined in spine case by comparing the injured worker's pre and post injury lifting capacity. A detailed medical history is also vital if apportionment is an issue. The IMC seeks to substitute the word "complaints" for the word "symptoms" to conform to section 10606(c) of title 8 of the California Code of Regulation.

8 C.C.R. 46-Section I-Components of the Report-C Current Complaints

Specific Purpose of the section

During an examination, the physician is required to catalog the injured workers current complaints related to the industrial injury using the patient's own words. Factual basis that the section is necessary. Section 10606(c) requires a physician to list the injured workers current complaints. The IMC wants to change the term "symptoms" used in the current version of the guideline to "complaints" for the reason cited above. The physician is required to interpret the worker's complaints into subjective factors of disability for rating purposes. 8 C.C.R. § 9727. The IMC recommends two additional changes to the section. First, the reporting of "paresthesias", meaning abnormal neurological sensations, is now required. The terms "muscle spasm", "atrophy" and "limping" are replaced by the phrase "difficulty with specific functions (walking, grasping, etc)" which in our view is broader and includes the terms the phrase replaces. The IMC also suggests other minor grammatical changes to the section.

8 C.C.R. 46-Section I-Components of the Report-D Relationship of Disability to Complaints

Specific Purpose of the section

This provision requires the examining physician to assess and report the effect of certain activities on the injured worker's complaints.

Factual basis that the section is necessary

Section 9727 of title 8 of the California Code of Regulations requires the physician to assess the effect of activity the injured workers' disability to determine the workers' subjective factors of disability, if any. The IMC proposes to modify the types of activities that the physician should consider when assessing the injured worker's subjective disability. The previous rule required that the physician assess the effect of the injury on "standard work activities" this proposal changes that to "functions such as lifting, pushing and pulling that are specific to the current job." The second change removes the phrase "activities specific to daily living" and replaces it with the phrase "activities of daily living."

8 C.C.R. 46-Section I- Components of the Report-E Past Medical History

Specific Purpose of the section

This provision requires the physician to record any past medical history, previous injuries, physical conditions, illness, or complaints that are similar or related to the injured worker's present complaints.

Factual basis that the section is necessary

This section is required to form the basis of any apportionment the physician may find. The IMC proposes a nonsubstantive change, substituting the word "complaints" for the word "symptoms."

8 C.C.R. 46-Section I- Components of the Report -F Physical Examination

Specific Purpose of the section

This section requires an examining physician to perform a physical examination of the injured worker.

Factual basis that the section is necessary

The IMC proposes to change the sections specifying the components the substantive examination depending on the part of body examined by the physician. Since the IMC is proposing to adopt an additional part of the guideline, it must amend the section to direct the physician to use the appropriate part of the guideline in the physical examination.

8 C.C.R. 46-Section I-Components of the Report-K Causation

Specific Purpose of the section

This provision requires the physician to state whether work caused the injured workers.

Factual basis that the section is necessary

This section is necessary because the basis of liability for workers' compensation benefits the injury arises out of work. The minor changed proposed by the Council is to insert the acronym "AOE" in the text.

8 C.C.R. 46-Section I-Components of the Report-N Factors of Disability

Specific Purpose of the section

This section illustrates the ways an examining physician may characterize the permanent disability of an injured worker.

Factual basis that the section is necessary

The goal of the neuromusculoskeletal examination described in this section is to produce a medical report that is ratable by the Disability Evaluation Unit. The descriptions of the rating factors appear in the Rating Manual. Rating Manual at pages 1-7 to 1-8. The IMC seeks to substitute a more extensive description of the subjective and objective disabilities than currently exist. The IMC made non-substantive, modifications to this disability section. The existing on “work restrictions” and “loss of pre-injury capacity” are being combined because they exist on a continuum depending on the severity of the injury. See the Rating Manual. Rating Manual at pages 2-14-2-15.

8 C.C.R. 46-Section I-Components of the Report-O Apportionment

Specific Purpose of the section

If the injured worker is permanent and stationary, the examining physician is required to consider if any permanent disability is subject to the rules of apportionment.

Factual basis that the section is necessary

This section is necessary because apportionment is one of the most overlooked issues in workers’ compensation medical-legal reports. Section 10606(1) of title 8 of the California Code of Regulation also requires the physician consider apportionment in appropriate cases. The purpose of the proposed change is to list the three statutory types of apportionment and to remind the physician to consider the issue while taking the history and reviewing the records provided by the parties.

8 C.C.R. 46-Section I-Components of the Report-N Future Medical Care

Specific Purpose of the section

This provision requires the physician to give their opinion about the nature and extent of any future medical that may be necessary to cure and relieve the injured worker of the effect of their industrial injury.

Factual basis that the section is necessary

This section is required because the opinion of a physician is necessary to support an award of future medical care to an injured worker by a Workers’ Compensation Judge. The IMC proposes several linguistic changes to conform the guideline to the current state of the law.

Section amended: section 46-Section II-Low Back injuries with or without a Radicular Component

Section II, outlines the physical examination performed on injured workers with low back injuries by a physician before completion of a comprehensive medical legal report. The IMC proposes to modify the title of this section to make it more specific.

8 C.C.R. 46-Section II- Low Back injuries with or without a Radicular Component
Physical Examination-E Testing-Orthopedic

Specific Purpose of the section

This provision sets forth the extent to which an examining physician may use in assessing disabilities of the lower back.

Factual basis that the section is necessary

There is a need to outline what tests a physician may perform as part of a physical examination. The IMC seeks to change a misspelling of Lasegue test that is currently in the text.

8 C.C.R. 46-Section II- Low Back injuries with or without a Radicular Component
Physical Examination-E Testing-Neurological-Other

Specific Purpose of the section

This section describes neurological tests that physician's may be use to evaluate neuromusculoskeletal disabilities.

Factual basis that the section is necessary

The current section specifically allows for digital rectal examinations under certain circumstances. The proposed change in the regulation further specifies that the evaluation of sphincter tone is appropriate circumstance, including ruling out tumor.

Section amended: section 46, Section III-Neck Injuries with or without a radicular component

Section III, is new and sets forth the physical examination performed on injured workers with neck injuries prior to a physician completing a comprehensive medical legal report. Currently, there is no evaluation guideline applicable to the evaluation of neck disabilities.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component – A Physical Examination –Observation and Inspection

Specific Purpose of the section

The physical examination section describes the nature and extent of the physical examination necessary to produce an adequate medical legal report.

Factual basis that the section is necessary

The necessity of this section is to describe the physical examination of the injured worker by the examiner. The nature of the examination is driven by the Rating Manual and Packard Thurber. The goal of the neuromusculoskeletal examination described in this section is to produce a medical report that is ratable by the Disability Evaluation Unit. Packard Thurber requires the physician to inspect the injured worker's body and report any obvious discomfort deformities, skin abnormalities surgical scars and other observations.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component – B Physical Examination –Palpation

Specific Purpose of the section

During the physical examination, palpation, or the touching of certain body parts, is required in a physical examination to assess certain body parts.

Factual basis that the section is necessary

This part of the guideline specifies which part of the neck the physician is required to palpate and what the physician is expected to observe and report.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component - C Physical Examination –Range of Motion

Specific Purpose of the section

The purpose of this section is to specify the body parts that must have their ranges of motion measured.

Factual basis that the section is necessary

The nature of the range of motion examination is driven by the Rating Manual and Packard Thurber. The section of the Rating Manual on spine disabilities, which includes neck disabilities, describe a number of factors of disability that can form the basis for a permanent disability rating for a cervical spine injury. Rating Manual at 2-13 to 2-15. Packard Thurber provides the physician with instruction on which ranges of motions to take and how to perform the tests. Packard Thurber at 14-15.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component - D Physical Examination –Measurements

Specific Purpose of the section

The purpose of this section is to require the examining physician examine the upper extremities and measure their girth as part of a cervical examination of an injured worker. Multiple measurements of the injured worker's grip strength are also required.

Factual basis that the section is necessary

Packard Thurber compels the physician to examine the upper extremities in all injuries of the spine. Packard Thurber at 9. Thurber requires physicians take three grip strength of the upper extremities. The physician must give an estimate of normal, uninjured, grip strength for the injured worker. Packard Thurber at 11-13.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component – E Physical Examination –Musculoskeletal

Specific Purpose of the section

This section authorize the examining physician to use their best clinical judgement to use whatever musculoskeletal test they determine is best calculated to aide in the diagnosis of the injured worker's condition.

Factual basis that the section is necessary

Section 10606 (g) of title 8 of the California Code of Regulations requires an examining physician to provide a diagnosis of the injured worker's illness or injury. The performance of these tests aids in that job.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component – F Physical Examination –Neurological

Specific Purpose of the section

This section requires the examining physician to perform four types of neurological examinations on an injured worker as part of a comprehensive medical evaluation, the test are motor examinations,

sensory examinations, reflex examinations and coordination examinations. The purpose of the examinations is to assess an injured worker's subjective disability.

Factual basis that the section is necessary

The Rating Manual specifies that weakness, pain and tenderness are ratable factors of disability that should be reported by an examining physician. Rating Manual at 2-13 n. 31. Packard Thurber also requires an evaluation of sensory disturbances and neurogenic residuals of injury. Packard Thurber at 11.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component – H Physical Examination –Breast Examination

Specific Purpose of the section

This section prohibits certain tests or examinations.

Factual basis that the section is necessary

It has come to the attention of the IMC that some physician's were performing breast examinations as part of their regular neuromusculoskeletal examination. The IMC wishes to prohibit breast examinations in any neuromusculoskeletal examination.

8 C.C.R. 46-Section III- Neck Injuries with or without a radicular component –section II Testing

Specific Purpose of the section

The section on testing sets forth the circumstances for performing tests and the documentation necessary to support their use. This section specifies certain tests are not authorized as part of the comprehensive medical examination.

Factual basis that the section is necessary

This section is necessary because physicians use diagnostic studies to support a diagnosis or help influence the physician's recommendation for possible medical care in the future. There is a need to determine which diagnostic studies are routine; which studies require further justification in the report and the tests that are not permitted as part of a comprehensive medical evaluation. A description of the assessment tools used by the physician is required to let either the DEU or WCAB judges determine the credibility of the report.

Local Mandates

The IMC has determined that these regulations do not mandate any programs upon local agencies or school districts.